

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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:
In re: : Chapter 11
:
SEARS HOLDINGS CORPORATION, *et al.*,¹ :
:
Debtors. : Case No. 18-23538-rdd
:
: (Jointly Administered)
:
-----X

**DECLARATION OF LEWIS J. LIMAN IN SUPPORT OF TRANSFORM HOLDCO
LLC'S RESPONSE TO DEBTORS' MOTION TO (A) ENFORCE ASSET PURCHASE
AGREEMENT AND AUTOMATIC STAY AGAINST TRANSFORM HOLDCO LLC
AND (B) COMPEL TURNOVER OF ESTATE PROPERTY AND REPLY IN FURTHER
SUPPORT OF ITS MOTION TO ASSIGN MATTER TO MEDIATION**

I, Lewis J. Liman, declare under penalty of perjury as follows:

1. I am an attorney duly admitted to practice before this Court, and I am a partner of the law firm Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb"), counsel for Transform Holdco LLC ("Transform"). I respectfully submit this declaration in connection with *Transform Holdco LLC's Response to Debtors' Motion to (A) Enforce Asset Purchase Agreement and*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

*Automatic Stay Against Transform Holdco LLC and (B) Compel Turnover of Estate Property
and Reply in Further Support of Its Motion to Assign Matter to Mediation.*

2. Attached hereto as Exhibit A is a true and correct copy of the Letter from Cleary Gottlieb to Weil, Gotshal & Manges LLP ("Weil"), dated February 11, 2019.

3. Attached hereto as Exhibit B is a true and correct copy of email correspondence with the subject line "RE: Sears" between Cleary Gottlieb and Weil, dated March 6, 2019.

Executed on March 18, 2019 in New York, New York.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LJL", is written over a horizontal line.

Lewis J. Liman

Exhibit A

CLEARY GOTTlieb STEEN & HAMILTON LLP

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New York, NY 10006-1470

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clearygottlieb.com

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DAVID G. SABEL	WILLIAM L. MCRAE	DANIEL C. REYNOLDS
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NICOLAS GRABAR	BREON S. PEACE	RESIDENT PARTNERS
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PAUL J. SHIM	MATTHEW P. SALERNO	MARY E. ALCOCK
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JORGE U. JUANTORENA	JONATHAN S. KOLODNER	HUMAYUN KHALID
MICHAEL D. WEINBERGER	DANIEL ILAN	KENNETH S. BLAZEJEWSKI
DAVID LEINWAND	MEYER H. FEDIDA	ANDREA M. BASHAM
DIANA L. WOLLMAN	ADRIAN R. LEIPSIK	LAURA BAGARELLA
JEFFREY A. ROSENTHAL	ELIZABETH VICENS	SHIRLEY M. LO
ETHAN A. KLINGSBERG	ADAM J. BRENNEMAN	JONATHAN D.W. GIFFORD
MICHAEL D. DAYAN	ARI D. MACKINNON	SUSANNA E. PARKER
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JEFFREY D. KARP	JARED GERBER	LOUISE M. PARENT
KIMBERLY BROWN BLACKLOW	COLIN D. LLOYD	OF COUNSEL
ROBERT J. RAYMOND	COBREY M. GOODMAN	
SUNG K. KANG	RISHI TUTSHI	
LEONARD C. JACOBY	JANE VANLARE	

February 11, 2019

BY E-MAIL

Ellen Odoner, Esq.
Sunny Singh, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119

Re: Asset Purchase Agreement (as it may be amended, modified or supplemented, the “APA”), dated January 17, 2019, by and among Transform Holdco LLC, Sears Holdings and Sellers

Dear Ellen and Sunny:

On behalf of Transform Holdco LLC (“Buyer”), I write in response to the letter signed by Mohsin Meghji, Chief Restructuring Officer of Sears Holdings, dated February 10, 2019, relating to the timing of the Closing of Buyer’s acquisition of substantially all of the assets of Sears Holdings pursuant to the APA. Capitalized terms used but not defined in this letter are used as defined in the APA.

Mr. Meghji’s letter refers to various discussions among the advisors to Sears Holdings and the Buyer on Friday, February 8, 2019 concerning Sellers’ desire to have closed the transaction on such date. As you know, the APA provides that, unless otherwise agreed by the parties, the Closing shall occur on the third Business Day following satisfaction of the various conditions to Closing (other than those to be satisfied at the Closing itself) – *i.e.*, February 13, 2019. Buyer nonetheless has worked tirelessly to close the transaction prior to the date provided in the APA and shared your disappointment that the Closing was not able to occur last Friday. This was attributable, among other things, to the Approval Order authorizing the transaction not being entered until approximately 3:15 p.m. on Friday afternoon and the need for further discussions with Buyer’s lenders. As you know, the lenders have the right to consent to any decision by Buyer to close earlier than the date provided by the APA.

Odoner, Singh, p. 2

Buyer and its advisors worked diligently through the weekend to be in position to proceed with an early Closing and, as you know, Buyer now expects to be able to do so today.

Please be advised that Buyer, by proceeding with an early Closing, is not waiving any rights under the APA, including, without limitation, any claims for breach by Sellers of their pre-closing covenants and improperly classifying certain reserves of credit card processors as Credit Card Receivables, all of which rights are fully preserved.

Sincerely,

CLEARY GOTTlieb STEEN & HAMILTON LLP


By: 
Sean A. O'Neal, a partner

Exhibit B

From: Odoner, Ellen
To: [O'Neal, Sean A.](#); [O'Reilly, Benet J.](#); [Austin, Christopher E.](#); [Liman, Lewis J.](#); [Barefoot, Luke A.](#)
Cc: [Schrock, Ray](#); [Singh, Sunny](#); [Lender, David](#); [Genender, Paul](#); [Friedmann, Jared](#); [Dizengoff, Ira](#); [aqureshi@akingump.com](#); [pbasta@paulweiss.com](#); [kcornish@paulweiss.com](#); [Britton, Robert](#)
Subject: RE: Sears
Date: Wednesday, March 6, 2019 5:15:01 PM

Sean,

At the time Benet and I spoke, it wasn't apparent to me that ESL was withholding \$57.5 million belonging to the Estate and unrelated to the issues in your letter. As our letter today indicates, as soon as those funds are turned over to the Estate, the Estate's advisors will be happy to sit down and discuss the issues you raised.

Ellen

From: O'Neal, Sean A. <soneal@cgsh.com>
Sent: Wednesday, March 6, 2019 3:06 PM
To: Odoner, Ellen <ellen.odoner@weil.com>; O'Reilly, Benet J. <boreilly@cgsh.com>; Austin, Christopher E. <caustin@cgsh.com>; Liman, Lewis J. <lliman@cgsh.com>; Barefoot, Luke A. <lbarefoot@cgsh.com>
Cc: Schrock, Ray <Ray.Schrock@weil.com>; Singh, Sunny <sunny.singh@weil.com>; Lender, David <david.lender@weil.com>; Genender, Paul <Paul.Genender@weil.com>; Friedmann, Jared <Jared.Friedmann@weil.com>
Subject: RE: Sears

Ellen, Ray:

I am reading your letter as a "no" to our suggestion that we try to resolve these issues consensually through mediation. We had understood from Ellen's discussions with Benet that after the sellers sent a formal response to our letter, the parties would schedule a meeting this week to discuss our respective views. We continue to believe that mediation is a more efficient and appropriate way to address these issues and that we should at least attempt to mediate before asking the court to resolve any disputes.

Sean

Sean A. O'Neal
Cleary Gottlieb Steen & Hamilton LLP
Assistant: ichan@cgsh.com
One Liberty Plaza, New York NY 10006
T: +1 212 225 2416 | M: +1 917 324 8364
soneal@cgsh.com | clearygottlieb.com

From: Odoner, Ellen [<mailto:ellen.odoner@weil.com>]
Sent: Wednesday, March 6, 2019 1:12 PM
To: O'Neal, Sean A. <soneal@cgsh.com>; O'Reilly, Benet J. <boreilly@cgsh.com>; Austin, Christopher

E. <caustin@cgsh.com>; Liman, Lewis J. <lliman@cgsh.com>; Barefoot, Luke A.
<lbarefoot@cgsh.com>

Cc: Schrock, Ray <Ray.Schrock@weil.com>; Singh, Sunny <sunny.singh@weil.com>; Lender, David
<david.lender@weil.com>; Genender, Paul <Paul.Genender@weil.com>; Friedmann, Jared
<Jared.Friedmann@weil.com>

Subject: Sears

Please see attached the Annex and Exhibits to the letter sent earlier today.

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Throughout this communication, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities.

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